

AUSTRALIA AND CATALONIA: A COMPARATIVE STUDY ON THE PROTECTION OF MINORITY LANGUAGES FROM A LEGAL STANDPOINT. EDUCATION IN THE MOTHER TONGUE. IS THE LANGUAGE A FACTOR OF INTEGRATION OR A BARRIER?

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Abstract. This article is a comparative study of the education system in minority languages between Catalonia and Australia from a legal standpoint. Catalonia has a complex legislation: National Constitution, Statute of Autonomy, Regional Laws, a strong legal framework, a language always alive as a political instrument to get the power. Australia has not a legal framework in this area and has a confused planning system. In Europe, the Council of Europe has been in charge of the protection of human rights. Australia signed and ratified some International Conventions which are not a strong legal basis to claim an education system in aborigines' languages. The Catalan Law on Linguistic Normalization n. 7 of 1983, replaced by the Law on Linguistic Policy n. 1 of 1998, has, among the other purposes, also that to stimulate the use of Catalan as language of education in all levels of teaching. The school has a fundamental importance for the transmission of the culture of minorities. If the educational systems didn't have any regime of teaching in the mother tongue all policies are not efficient.

Keywords: linguistic policy, education system, national framework, Australia, Catalonia

1. Introduction

Catalonia and Australia are two realities far away not only from a geographic point of view but historically, politically, linguistically and, from a legal point of view, since Australia, as Commonwealth country, is a Common Law country, whereas, Spain is a Civil Law country. The rationale for comparing the two contexts is that, to some extents, they are opposite.

Australia and Spain both signed and ratified some International Conventions which are not a strong legal basis to claim an education system in minority languages¹ but are, however, a start. Some of these instruments are soft law, consequently, they are not legally binding. In the Spanish Framework there are further instruments which belong to the Council of Europe and to the European Union.

Australia signed a number of human rights international instruments which recognise the protection and promotion of languages. The 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) recognise the right of all people to participate in the cultural life of their community. Moreover, it is recognised that is not sufficient for signatory Governments to simply ensure legal equality. There is also an obligation to take positive steps towards achieving substantive equality. There is a direct link between the vitality of a culture and the preservation and use of its language. Thus, access to traditional languages is imperative, in order for aboriginal people, to participate fully in their cultural life². The United Nations Declaration on the Rights of Indigenous peoples, adopted by the General Assembly the 13th September 2007, by a majority of 144 states, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions might be an important document regarding this topic. It is interesting to note that Australia voted against, consequently it is not possible to apply this document in Australia. It is soft law, it is not legally binding, despite this Australia did not ratify.

In Spain there are further instruments which belong to the Council of Europe and to the European Union. Regarding the first one, the Council of Europe is in charge with the protection of Human Rights. Several Human Rights instruments were written under the auspices of the Council of Europe, included the instruments for the protection of minority languages as, in 1992, the European Charter for Regional or Minority Languages, and, in 1995, the Framework Convention for the Protection of National Minori-

¹ 1948 Universal Declaration of Human Rights (UDHR), 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1989 Convention on the Rights of the Child (CROC), 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

² New South Wales Aboriginal Languages Policy 24 May 2004.

ties. These Treaties are legally binding for the states who signed and ratified, consequently, are more efficient than soft law. Spain signed and ratified both. In addition, as a member of the European Union, the EU Law framework applies to Spain. Important steps were taken notably in the form of European Parliament Resolutions³. Unfortunately, there are not detailed and strong provisions for the protection of minority languages in the EU Law. The Treaties contain only vague provisions on this topic. The Charter of Fundamental Rights of the European Union which is legally binding under the Treaty of Lisbon, contains art. 21 and 22 related to this topic⁴. In addition, the European Commission, with the support of the European Parliament, arranged financial instruments to help languages which are not official⁵ and in 2002 an EU Network of Independent Experts on Fundamental Rights was established to exercise monitoring and advisory functions. A European Union Agency for Fundamental Rights has been established in Vienna in 2007 including also discrimination against national and linguistic minorities⁶.

In the autonomous community of Catalonia, and not only there, Catalan is spoken. It is one of the strongest languages in Spain. More than 7 million people speak Catalan. This language has different administrative statutes in different regions. Catalonia has a complex legislation: national Constitution (art. 3 related to this topic⁷), regional Constitution (art. 3 of 1979 Statute of Au-

³ Such as the Arfé Resolution in 1981, the Kuijpers Resolution in 1987 and the Killilea Resolution in 1994.

⁴ Art. 21 states: "Any discrimination based on any such ground as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited....", according art. 22 "The Union shall respect cultural, religious and linguistic diversity". The Treaty of Lisbon is under force since December 2009.

⁵ <http://www.uoc.es/euromosaic>; <http://www.mercator-central.org>

⁶ http://europa.eu/agencies/community_agencies/fra/index_en.htm

⁷ The Spanish Constitution was written in 1978, its art. 3 states: "1) Castilian is the official language of the State. All Spaniards have the duty to know it and the right to use it. 2) The other languages of Spain will also be official in the respective autonomous communities, in accordance with their Statutes 3) The richness of the linguistic modalities of Spain is a cultural patrimony which will be the object of special respect and protection".

tonomy and art. 6 of 2006 Statute⁸), regional laws (important instruments are the Laws on Linguistic normalisation), a strong legal framework, a language always alive as a political instrument to get the power. Catalan is the language for the *élite*, for the rich and powerful people, at the *Generalitat* of Catalonia (the government) all speak Catalan. It is a territorial system⁹, this means that these rules apply only in the territory of Catalonia but not in the rest of Spain.

⁸ The Statute of Autonomy of Catalonia was written in 1979, its art. 3 states: “1) The language of Catalonia is Catalan 2) The Catalan language is official in Catalonia, as also is Spanish, which is official throughout the Spanish State 3) The Government of Catalonia will ensure the normal and official use of both languages, will take the measures necessary in order to ensure knowledge of them and will create the conditions making it possible for them to achieve full equality in terms of the rights and duties of citizens of Catalonia 4. The Aranese language will be taught and will be the subject of particular respect and protection”. At the moment, Catalonia has a new Catalan Statute, approved on the 18th June 2006 and according this new Statute the knowledge of Catalan language is compulsory for all Catalans. Art. 6 of the 2006 Statute of Autonomy of Catalonia states: “1) Catalonia’s own language is Catalan. As such, Catalan is the language of normal and preferential use in Public Administration bodies and in the public media of Catalonia, and is also the language of normal use for teaching and learning in the education system. 2) Catalan is the official language of Catalonia, together with Castilian, the official language of Spanish State. All persons have the right to use the two official languages and citizens of Catalonia have the right and the duty to know them. The public authorities of Catalonia shall establish the necessary measures to enable the exercise of these rights and the fulfilment of this duty; in keeping with the provision of Article 32, there shall be no discrimination on the basis of use of either of the two languages 5) The Occitan language, known as Aranese in Aran, is Aran’s own language and is official in Catalonia, as established by this Statute and by the laws of linguistic normalisation”. There was a 2006 appeal lodged by the conservative opposition against the reform to bolster regional autonomy. After four years of deliberation, finally, in June 2010, the Spanish Constitutional Court handed down its ruling approving 95% of original provisions but declaring 14 of 223 articles unconstitutional and reinterpreting 27 of them. This judgment is refusing the preferential status of the Catalan language stated in art. 6.

⁹ GARDNER N., PUIGDEVALL I SERRALVO M., WILLIAMS C. H., Language, Revitalization in comparative context: Ireland, the Basque Country and Catalonia, in Language Revitalization. Policy and Planning in Wales Edit by Colin H. Williams University of Wales Press Cardiff 2000, p. 339.

2. Australian framework

In Australia, languages carry with them an intimate understanding of the ecological system and the land with which they are associated. Before European invasion, Australia was home to over 250 distinct languages. In the last 220 years Australia has suffered the largest and most rapid loss of languages known. The situation in Australia differs from that of New Zealand due to a vastly larger number of distinct indigenous languages. In Australia there is no legislative recognition of languages. It is a federal system, consequently, has a federal legislation and a regional legislation. There is no peak national body to advise on indigenous language policy and no declared national policy. Indigenous languages, in Australia, remain adrift in a sea of uncoordinated actions with state and federal jurisdictions and a lack of overall strategic planning¹⁰. Despite significant developments in the late 1980s and early 1990s at national policy level, only New South Wales and the Northern Territory have comprehensive indigenous languages policies. Victoria is developing one¹¹.

The New South Wales has the first Aboriginal Languages Policy in Australia¹². Two hundred and fifty years ago, over seventy Aboriginal languages and dialects were spoken in New South Wales. Today, due to the enormous impacts on Aboriginal culture, associated with European invasion, many of these languages have fallen into disuse, while, some have few surviving fluent speakers. The policy created a framework for the NSW Government to assist Aboriginal people and communities across NSW to revive and preserve traditional languages. In doing so, the policy is firmly based on the principles of community ownership and control, capacity-building and improved Government coordination. The policy was formally launched in 2004. The strategy to implement the policy was finalised and realised publicly in 2006–2007. In the Northern Territory, the high percentage of indigenous students and the relatively high numbers of people who still speak their language(s) as well as English (40% speak a language other than English at home), means that there is more focus on Indigenous education than many other states and territories. Up to one-third of Indigenous students

¹⁰ <http://www.ngapartji.org/content/view/19/79/>

¹¹ http://culturitalia.uibk.ac.at/siena/97_2/amba.htm

¹² <http://www.daa.nsw.gov.au/landandculture/langpolicy.html>

are living in rural and remote areas speaking a language other than English as their first language. Despite this, Aboriginal students are not recognised by the Commonwealth as requiring English as a Second Language funding and support. Furthermore, the Northern Territory government announced, in December 1998, that it was phasing out bilingual education programs in government schools in Aboriginal communities, and replacing them with 'English as a Second Language' programs because of the low standards of English literacy among Aboriginal students¹³. Again, at the end of 2008, the Minister of Education announced that the bilingual schools are going to be closed in order to increment the knowledge of English. The Minister could not have made a decision so quickly if Australia accorded recognition to indigenous languages officially, if there was an overall strategic planning. In Victoria, currently, there is no state-wide policy on indigenous languages or a comprehensive approach to languages in state schools. There are however processes underway to change the situation.

3. Catalonia

The Catalan Law on Linguistic Normalization n. 7 of 1983, replaced by the Law on Linguistic Policy n. 1 of 1998, has, among the other purposes, also that to stimulate the use of Catalan as language of education at all levels of teaching¹⁴. The current education system was first implemented in 1980s. Catalan is also used in the public administration as preferential language.

Catalan, therefore, is not only a language to study but it is the language used for teaching in all levels of non university education. Also in some universities, as for example the *Universidad Autònoma* of Barcelona, Catalan is the language normally used for teaching instead of Castilian. The request from the students, during the lessons, of the Castilian language, is considered almost offensive.

¹³ Australian Human Rights Commission: http://www.humanrights.gov.au/social_justice/native_title/nt_issues/failure.html Education and the abolition of Bilingual education in the Northern Territory.

¹⁴ POGGESCHI G., *Le nazioni linguistiche nella Spagna autonómica: universalità della lingua castigliana e vitalità delle lingue regionali*, Padova 2002, p. 209.

In Catalonia is preferred who dominates both languages, Castilian and Catalan. The Catalan educational system consists in the use of both official languages, Castilian and Catalan, in the didactic activities.

In the Catalan educational system 'linguistic immersion' means supremacy of the Catalan in the programs of study in comparison to Castilian. For some exponents of the doctrine on linguistics rights, the fact to reserve a privileged presence to the local language seems a solution, to some extent, extreme, justified by the fact that the minority language is under the pressure of the dominant language in the rest of Spain, Castilian.

The linguistic integration has been facilitated because of the wide diffusion of Catalan and because of the fact that it is close to Castilian.

The Catalan Parliament has approved a new Education Law which consolidates the use of Catalan as the main teaching language in Catalonia's education system, both in primary and secondary education.

4. Comparative approach

In Australia, aboriginal languages are, to some extents, allowed at school but are not compulsory, even in New South Wales, despite the new policy (the NSW Aboriginal Languages Policy is the first in Australia), whereas, according to art. 6 of the new Catalan Statute of Autonomy of 2006, the knowledge of Catalan is a right and is a duty for all citizens, which is very strong statement.

In Australia the linguistics are trying to revitalize the 200 aboriginal languages which at the moment are spoken by few people. There are not grammars and literature, whereas, in Catalonia the language is spoken by more than 7 million people thus, technically, is a minority language in Spain but not in the territory of Catalonia. After Franco dictatorial regime the normalization of Catalan, normal use of Catalan in all domains, was introduced.

In Australia the situation is different, there are children speaking mother tongue only in the Northern Territories, they learn English at school, whereas, in Catalonia in all territory, there are children Catalan mother tongue or at least bilingual who are studying Catalan and Spanish at school. Even in the streets in Sydney it is possible to hear only English maybe other European languages such

as Italian, Spanish, German, Greek, whereas, in Barcelona, Catalan is normally spoken everywhere.

5. Minority languages: barrier or a factor of integration?

The school has a fundamental importance for the transmission of the culture of the minorities. If the educational systems did not have any regime of teaching in the mother tongue all policies are not efficient. Is the language a factor of integration or a barrier?

Our society became a multiethnic society and English has globalized the western world, it is the language *passpartout* that all must know.

In Australia, the new migrants were more than welcome since it was useful to have labour work and their languages were protected. They must learn English to be integrated in the society but normally their languages survived. There are second or third generation of Italians still able to speak in Italian. Their mother tongue is English but they are able to speak Italian because at home somebody (grandmother or grandfather) was able to communicate only in Italian and another reason is that Italian grammars and Italian television are easily available.

In Catalonia, as in other parties of the western world, there is the problem how integrate the immigrants. Is it opportune to cancel the differences or to preserve them? The existence of a part of the population who speaks in Castilian in Catalonia it is due to the external population, especially because of the migration between 1950 and 1975 and not of because of the Catalan population¹⁵. Catalonia is a rich region, for this reason today it is also a destination of numerous immigrants coming from non Catalan-speaking regions of Spain and from not EU countries, especially Morocco. In which language do the children of the immigrants receive education: in Castilian, Catalan or in their mother tongue? The new immigrants can wish or not the integration, who thinks about making return in the own country will prefer the children maintain their own language and they do not want to be integrated. For the immi-

¹⁵ SOLE' I DURANY J. R., *La política lingüística de la Generalitat de Catalunya* in E. Morales (ed) *Lengua del Estado, lengua del pueblo*, Ateneo Puertoriqueno 2002, p. 285 et seq.

grants, Castilian is more prestigious and more useful than Catalan, since it is spoken not only in Spain but also in South America. The school should respect the individuality of all pupils, favouring the linguistic integration and respecting their original culture. The pluralism is the rationale of any democratic society¹⁶.

In Australia, there were bilingual schools only in the Northern Territories, where the aboriginal communities are living and the children are basically aboriginal mother tongue so, in the first four hours of the morning, they received education in aboriginal languages and, in the afternoon, in English. In order to incentive the presence of the pupils in the afternoon, the Minister of Education, at the end of 2008, decided to change policy and required to teach English in the morning. It was possible to change policy since there are no guarantees in order to have bilingual education, consequently, the regional government can change easily mind. The Government can change programmes and policy if the politicians change. Without legal rules, politicians can always change mind, in addition, without power, all politics can be useless, if the population is powerless the measures are not effective. In Spain, the regional laws of normalization worked better according the situation, the same measure can achieve different results if applied in a territory where the minority language is powerful, for example, the case of Catalonia compared with other Spanish regions. In Australia the aboriginal communities are powerless and this is exactly the problem.

Preserving one's own language is a way to keep and to discover information that would irremediably go otherwise lost: in Australia for example aborigines' words have played a part in the discovery of new vegetable species.

The aboriginal languages might be considered a barrier for the integration for a certain point of view since the Anglo-Saxon society is dominant, without any doubt, and certainly in order to be integrated it is a must to have proficiency knowledge of English. In Catalonia, the knowledge of Catalan is not a barrier since this language is quite popular in that territory and normally people are bilingual; it could be considered a barrier for people who came from outside that have to learn Catalan too in order to be integrated in the society. Individual multilingualism has not the same

¹⁶ POGGESCHI G., *Le nazioni linguistiche nella Spagna autonómica: universalità della lingua castigliana e vitalità delle lingue regionali*, Padova 2002, p. 13.

function in Australia and in Catalonia since, in my opinion, the preservation of aboriginal languages in Australia is a sort of revival ethnic, the language is linked with the land, that land which when Europeans arrived was not *res nullius* but belonged to the aboriginal populations, to call again the Ayers Rocks with its original name *Urulu* it is to remark that that land belonged to the aboriginal populations¹⁷. In Catalonia too it is possible to consider the Catalan in this way, rediscover the own root in order to cancel the dictatorial regime of General Franco but the function is different since it is not practicable at all to use the aboriginal languages in the everyday life since there are few speakers, the languages are a lot and very different, there are not grammars and not legal rules in order to protect them. Basically, the lack of power left these languages to the wishes of politicians, whereas, in Catalonia the wealth of the region made easier the normalization of Catalan and the success of these policies.

The minority languages need positive measures to make them equal with the majority languages in the private and public sector. A prerequisite for every linguistic policy is the tolerance. The positive measures need finance resources and power and this is the reason why in Australia there is not a general plan for the protection of aboriginal languages.

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¹⁷ <http://www.alrrc.nsw.gov.au> visited the 13-01-2009 "Language is our Soul" Aunty Rose Fernando; "Language is very important to us, it is our connection to our ancestors and for those of us who still use our language can connect with the ancestors of the past. We belong to the land without the land we are nothing. Our life blood comes from the land and what is of the land. Language holds secrets to the connection of the land" Aunt Phyllis Darcy, Awabakal Descendant, "Aboriginal languages were here before we came, they are here now and they'll be here long after we've gone" Brother John Wright, Principal St Joseph's Primary School, Walgett.

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Kokkuvõte. Alessia Vacca: Austraalia ja Kataloonia: võrdlev uurimus vähemuskeelte kaitsmisest seaduslikust vaatenurgast. Emakeelne haridus – kas keel on integratsiooni faktor või barjäär? Käesolev artikkel uurib võrdlevalt Kataloonia ja Austraalia vähemuskeeli seaduslikust vaatenurgast lähtudes. Kataloonia seadusandlus koosneb mitmest osast: rahvuskonstitutsioon, autonoomia statuut, piirkondlikud seadused, tugev seaduslik raamistik, keel, mida kasutatakse poliitilise abivahendina võima saavutamiseks. Austraalias ei ole selles valdkonnas seaduslikku raamistikku, seal on segane planeerimissüsteem. Euroopas vastutab Euroopa Nõukogu inimõiguste kaitsmise eest. Austraalia on alla kirjutanud ja ratifitseerinud rahvusvahelise konventsiooni, mis ei paku tugevat seaduslikku alust nõudmaks aborigeenikeelset haridussüsteemi. Katalaani keelelise normaliseerumise seadus nr 7 aastast 1983, mis on asendatud keelepoliitika seadusega nr 1 aastast 1998, peab lisaks teistele eesmärkidele stimuleerima katalaani keele kasutust hariduskeelena igal õpetamistasandil. Koolil on oluline roll vähemuskultuuri levikus. Kui haridussüsteemi ei toetaks ükski emakeelset õpet nõudev seadus, ei oleks kõik strateegiad efektiivsed.

Märksõnad: keelepoliitika, haridussüsteem, rahvuslik raamistik, Austraalia, Kataloonia

